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SUBJECT: ANOTHER TRANSITION PROCEDURAL GLITCH

¶1. (U) In accordance with the DRC's very complicated new constitution, and following the July 30 presidential and National Assembly elections, the 500 members of the new elected National Assembly are to take office in an initial session on September 22. The ceremonial installation is expected to be followed by an initial Assembly working session to elect officers and formulate and adopt internal regulations and procedures. Under terms of the new constitution, the Assembly will play an important role in the future government, including GDRC budgetary approval and oversight, needed majority support for the new Prime Minister and ministers, and the power to pass a motion of censure, bringing down the government. The installation of the new Assembly represents an important and visible milestone toward the successful completion of the DRC's long-running transition and eventual installation of a democratically-elected government.

¶2. (SBU) One of the provisions of the electoral law, however, precludes a government minister from also serving as a National Assembly representative. Roughly half of the Transition Government's 60 plus ministers and vice ministers were elected to the new Assembly, thus obliging them to make a choice soon whether to continue as Transition ministers, or take their seats in the new Assembly. According to the electoral law, newly-elected members have eight days from the time their mandates are validated to accept their positions in the Assembly. The law, however, is silent on when that "validation" actually takes place either with the installation of the Assembly itself, or when the DRC's Supreme Court validates the legislative results in mid-November. In any case, if an elected representative does not take his or her seat, the candidate's "suppleant" (or substitute, who was named by the candidate when he or she registered to run, but did not appear on the ballot) will automatically be selected for the vacant seat. On the other hand, the resignation of roughly half the transition cabinet will have an obvious impact on the operations of the Transition Government for its remaining lifespan. Given October 29 second-round elections, a new post-election government may not be formed before the end of this calendar year.

¶3. (SBU) Many, if not all, of the current ministers are clearly loathe to give up their current positions, with all the attendant opportunities for better (official and non-official) compensation. On the other hand, presumably these politicians will not be eager to sacrifice their secure seats in a future institution for an uncertain fate as a possible selectee in the new government. At this point, there is no obvious legal way to finesse the issue.

¶4. (SBU) Comment: Some have speculated that cutting the

cabinet in half could, in fact, improve the operations of the poorly functioning Transition Government. Clearly, however, any band-aid fix, such as assigning remaining ministers to cover more than one ministry or seeking improvised coverage by vice ministers, would not be ideal. Trying to reach negotiated political deals to fill the ministerial vacancies for the remaining months of the transition is possible, but would most likely result in a crop of appointees more interested in seeking short-term opportunities at the trough than in carrying forward the work of the country. Whatever the approach taken, the situation would seem to offer another basis for low expectations of GDRC performance over the next few months. End comment.

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